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DISTRICT OF WYOMING
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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Civil Action No.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

OTCV 044D

v.

CUNDY ASPHALT PAVING CONSTRUCTION, INC.

Defendant.

COMPLAINT AND JURY TRIAL DEMAND

Receipt # NA
Summons: issued
 not issued

NATURE OF THE ACTION

This action arises under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, to correct unlawful employment practices on the basis of sex (pregnancy) and to provide appropriate relief to Kimberly A. Dalby ("Dalby"), a former employee of Defendant, Cundy Asphalt Paving Construction, Inc. As set forth more fully below, the EEOC alleges that Defendant unlawfully terminated Dalby because of her pregnancy, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(A).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Wyoming.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Section 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant, Cundy Asphalt Paving Construction, Inc., has continuously been a Wyoming corporation doing business in the State of Wyoming and has continuously had at least fifteen employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Ms. Dalby filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. On or about April 29, 1998, Defendant engaged in unlawful employment practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by discharging Ms. Dalby because of her pregnancy.

8. Ms. Dalby was employed by Defendant in Gillette, Wyoming, as a trainee truck driver.

9. Ms. Dalby was initially hired by Defendant in March 1998, as part of a apprenticeship program.

10. In March or April 1998, Ms. Dalby attended classes as part of the apprenticeship program.

11. From April 20, 1998, through April 28, 1998, Ms. Dalby was assigned to work at one or more jobsites.

12. During the time Ms. Dalby worked for Defendant, she performed the duties of driver trainee, as well as other general labor and flagger duties as assigned.

13. On April 28, 1998, Ms. Dalby informed her supervisor of her pregnancy, and provided a physician's statement indicating that she was restricted from lifting more than 25 pounds.

14. On April 29, 1998, the Defendant terminated Ms. Dalby's employment.

15. Defendant told Ms. Dalby that she was terminated because there were no jobs available which did not require lifting more than 25 pounds.

16. Defendant's job description for the position of driver trainee does not indicate the job requires lifting of more than 25 pounds.

17. Defendant's job description for the position of flagger does not indicate the job requires lifting of more than 25 pounds.

18. Because of Ms. Dalby's pregnancy, Defendant denied her equal employment opportunities and otherwise adversely affected her status as an employee.

19. As a result of Defendant's wrongful termination of Ms. Dalby's employment, she has suffered damages, including but not limited to emotional distress, lost earnings and benefits, medical and job search expenses, in amounts subject to proof.

20. The unlawful employment practices complained of in the foregoing paragraphs were intentional, or were committed with reckless disregard for Ms. Dalby's federally protected rights.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of pregnancy.

B. Order the Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for pregnant employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order the Defendant to make whole Ms. Dalby, by providing appropriate backpay with prejudgment interest, in amounts to be proved at trial, and other affirmative and equitable relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, rightful-place reinstatement of Ms. Dalby, or front pay where appropriate.

D. Order the Defendant to make whole Ms. Dalby, by providing compensation for past, and future pecuniary losses, including but not limited to job search expenses and medical expenses incurred as a result of the unlawful employment practices described above, in amounts to be determined at trial.

E. Order the Defendant to make whole Ms. Dalby, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper.

H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Dated: March 14, 2001

Respectfully submitted,

GWENDOLYN REAMS
Associate General Counsel

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Regional Attorney

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Supervisory Trial Attorney

RITA BYRNES KITTLE
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DAVID D. FREUDENTHAL
United States Attorney

CAROL A. STATKUS
Assistant United States Attorney

PLEASE NOTE:

It is sufficient for purposes of service on the Plaintiff Equal Employment Opportunity Commission that pleadings, notices, and any other court document be served upon the Trial Attorney. Therefore, duplicate service is not required on the General Counsel or Associate General Counsel located in Washington, D.C.

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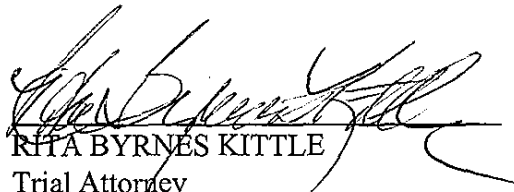
Dated: March 14, 2001

Respectfully submitted,

GWENDOLYN REAMS
Associate General Counsel

JOSEPH H. MITCHELL
Regional Attorney

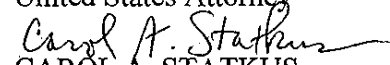
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